



**FORWARD GROUP**  
Private Client | Corporate | Funds

# **GUIDANCE NOTE**

## **TAX ADVICE**

## Introduction

Before Forward Group can incorporate or administer a Jersey entity it is a regulatory requirement that the rationale and reason for using a Jersey vehicle is documented and understood.

Often the reason for using a Jersey company or trust is as part of a tax mitigation or tax planning strategy, be it for inheritance taxes, wealth tax, transfer pricing reasons, or ensuring the most efficient and best use of capital by deferring any resultant tax until it is repatriated elsewhere.

It is a legal requirement that we can demonstrate that the company or proposed structure is being used for a proper purpose and is not being used to evade tax or other laws in another jurisdiction.

As well as it being a regulatory requirement, any potential client should obtain professional advice to ensure that what they anticipate the Jersey structure will achieve is realistic. Usually obtaining this advice is the part of the due diligence process that can take the longest and, as such, this should be first step undertaken, especially if there is a time constraint involved.

This document serves as a guide as to what we would expect the tax advice to include. It is only a high-level guide; each client's structure is unique to them, and the resulting tax will be specific to their circumstances.

The resultant tax advice is a matter for your chosen professional to determine, in connection with you, and your specific requirements.

If you do not have a tax adviser, we work with an extensive network of professional lawyers and accountants and would be very happy to refer you to someone suitable to assist. If you ask us to make a referral, then you can be confident that your adviser will have extensive knowledge and experience in this specialist area.

If you prefer to use your own adviser, we have presented this Guidance Note in the form of a list of questions to discuss or share with your adviser and to ask that they report on. The adviser will likely have comments or will raise issues outside of the items noted in this document, but we hope it serves as a useful starting point in detailing what we would expect to see covered in their advice to you. It will also allow you to fully understand any limitations of the structuring and potential pitfalls that you need to be mindful of in its use and operation.

Not all structures are tax driven, particularly when established for people who are resident in either low or no tax jurisdictions. Some structures are established for asset protection, wealth transfer, privacy or a wide variety of other reasons; that is of course totally acceptable. In those circumstances we would seek to satisfy our regulatory obligations by receiving advice from a professional to confirm that there are no reporting obligations outside of Jersey.

The tax advice you receive is your advice and should be addressed and directed to you. We request that you then share the advice with us when you look to establish a structure in Jersey.

We may also periodically ask that you update your tax advice, particularly ahead of significant distributions or any structuring events, where there are legislative changes, or where you move residence, domicile or the directors or the shareholders are due to change, and there may be potential taxation consequences.



***How should the ownership of my Jersey company be structured?***

There are options around direct ownership, ownership through a trust or foundation or through other structures that may be appropriate especially when moving across borders. Different options can present different tax issues or planning opportunities.

***When and how should my structure be established and funded?***

Issues around timing need to be considered, for example, ahead of or after someone moves tax residency.

If assets are moving into an entity, consideration needs to be given as to whether this needs to happen in any particular way. For example: are shares being issued in exchange for existing assets or investments; is lending involved and, if so, from what entity or person; should there be interest or other charges levied on any lending?

Will the assets from an existing company be transferred in, or will a company take ownership of another company and then that company be liquidated? Should shares be settled into a trust or is it more beneficial if certain assets are sold into a structure? The different approaches may affect capital gains or other taxes.

The mechanism would need to be understood and the resulting tax implications of setting up the structure in the correct way as detailed in the advice.

***What are my personal reporting obligations?***

Certain jurisdictions have obligations arising as a result of Controlled Foreign Company ("CFC") or similarly titled legislation. A CFC is a corporate entity that is registered and conducts business in a different jurisdiction or country than the residency of the controlling owners.

In certain jurisdictions, owners of CFCs must report the earnings of the CFC on their personal tax returns, or they may have other obligations. If this applies, then we would expect the tax advice to detail that so that the structure, and you as our client, can fulfil their respective obligations.

In trust structures there are certain reporting obligations around specific anniversaries particularly for UK inheritance tax. The adviser should confirm those obligations.

***Would my structure have any reporting obligations in my country of residence or where any assets that are owned by it are located?***

It may be that the Jersey company or trust has filing obligations of some sort as a result of its ownership structure or the assets that it owns.

If the Jersey vehicle is to own assets sited in another jurisdiction, will there be any filing requirements? This occurs most commonly with real estate property. In the UK, for example, there are a number of filing requirements from Annual Tax on Enveloped Dwellings ("ATED") to Non-Resident Capital Gains Tax ("CGT") and Corporation Tax returns along with resultant fees to pay depending on the nature of the property (residential or commercial), the rental income and/or upon purchase or sale.

This may also occur when beneficiaries of a trust receive capital or income distributions or benefits in kind such as interest free loans, or where there are inheritance or wealth taxes to consider.

The reporting obligations may also depend on the location of the 'management and control' of a Jersey company (see below).



***Who should the directors of the company be and where should they be located?***

A key concept in the tax residency of a company is not only its place of incorporation, but where the management and control of that company takes place. The company may have reporting obligations in more than one place (Jersey and another location) as a result of the management and control being outside of Jersey.

The location of the management and control is usually deemed to be where the directors meet and make their decisions, or sometimes where the directors themselves are resident.

Forward Group can provide a corporate director or alternatively natural persons can be appointed to the board. This will generally mean that the company will be deemed to be managed and controlled in Jersey.

If you want to act on the board in a sole capacity, jointly with others, or jointly with our corporate director, then this may affect the company's tax residence, particularly if you do not travel to Jersey for any board meetings.

There are some jurisdictions that may deem certain persons to be acting in a capacity equivalent to being a director depending on their actions in relation to the company. For example, if the persons are seen to be instructing the company or have access or control to a bank account etc. In these instances, they may be considered to be a 'shadow director' and this may have an impact on the company's tax residency. The tax advice should cover what a person with an interest may, and may not do, to be considered a shadow director and any resulting consequences.

***Where should the company maintain its banking relationships?***

Remitting funds into certain countries may impact on the company's tax reporting or it may have other implications around sales taxes or tainting of capital.

If a Jersey bank account is required for a company, it is generally a requirement that a Jersey director is a signatory, although there may be banks that will make an exception to this particularly where a client has a wider banking relationship.

***Trading / cross border selling / paymaster companies***

If the company is to be involved in internet or selling services across borders or to group entities, then it may be necessary to consider transfer pricing requirements.

This may also be relevant when using a structure that is providing funding to other entities and in determining appropriate interest rates to be allowable in other jurisdictions.

International payments or receipts may be subject to withholding taxes and anything that may potentially affect the structure should be considered.

If the company is a paymaster for employees in different jurisdictions, it is important to know if there are any payroll reporting obligations. If a structure is being used to circumvent any particular employment or other legislation that might otherwise prevail by operating in a different jurisdiction, then the rationale and reasoning behind that needs to be detailed.

***VAT***

The VAT implications of moveable luxury assets held in a Jersey company should be considered where applicable, such as for private jet aircraft, yachts, cabotage and/or days that the asset can spend in the European Union, for example.



***Other tax implications?***

The above should not be considered an exhaustive list.

Other tax implications include: investment restrictions may apply especially when setting up a structure as part of a jurisdictional move by a client and that capital may be tainted if it enters or is invested into a particular jurisdiction. Any such restrictions should be clearly considered and documented in the tax advice.

**Wider tax considerations**

The following is a list of tax considerations you should be aware of, although may not need to be considered in the specific advice you receive and share with us.

***Economic substance***

Jersey, in common with many other international finance jurisdictions, introduced legislation in order to address concerns that Jersey could be used to artificially attract profits that are not commensurate with economic activities and a substantial economic presence in Jersey.

The Taxation (Companies – Economic Substance) (Jersey) Law 2019 (“the Substance Law”) imposes economic substance requirements on Jersey tax resident companies that undertake certain relevant activities in respect of financial periods commencing on or after 1 January 2019.

In essence, such companies will have to demonstrate that they have substance in Jersey by being directed and managed in Jersey, having adequate people, premises and expenditure in Jersey when conducting core income-generating activities (“CIGA”) in Jersey.

The Substance Law applies to Jersey tax resident companies involved in CIGA, which most commonly affects holding company businesses and intellectual property holding businesses.

Forward Group are happy to assist on this aspect of any structuring.

***FATCA / CRS***

As a Regulated Financial Institution, Forward Group must comply with the Foreign Account Tax Compliance Act (“FATCA”) and Common Reporting Standard (“CRS”).

The FATCA / CRS regulations require us to collect certain personal information from our clients relating to their tax status and to potentially report this, along with their account details, to relevant tax authorities, where those individuals have reportable accounts because of their ownership of structures in international finance jurisdictions.

If you are engaging with us as a client, you will have been asked to complete our Personal Information Form which includes details about your tax residency in order to allow us to comply with FATCA / CRS requirements.

Reporting under FATCA and CRS is automatic every year. Being in possession of correct tax advice will assist you in ensuring your tax obligations have been satisfied in your country of residence.





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